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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,297	09/11/2003	Nobumasa Suzuki	P24194	3563

7055 7590 04/30/2007  
GREENBLUM & BERNSTEIN, P.L.C.  
1950 ROLAND CLARKE PLACE  
RESTON, VA 20191

EXAMINER
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PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	04/30/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/30/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

**Office Action Summary**

Application No.

10/659,297

Applicant(s)

SUZUKI ET AL.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3,4,6 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 is/are allowed.
- 6) ☒ Claim(s) 4,6,11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/12/07 has been entered.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 11 is rejected under 35 U.S.C. 101 because it is drawn to non-statutory subject matter. In claim 11, line 10, applicant positively recites part of a human, i.e. "an engaging member to be inserted in a bone". Thus claim 11 includes a human within its scope and is non-statutory.

A claim directed to or including within its scope a human is not considered to be patentable subject matter under 35 U. S.C. 101. The grant of a limited, but exclusive property right in a human being is prohibited by the constitution. In re Wakefield, 422 F. 2d 897, 164 USPQ 636 (CCPA 1970).

***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess et al. (20030114853) in view of Altarac et al. (6,616,668).

With respect to claim 6, Burgess et al disclose a rod connector (66) comprising a connector main body (76) swingably attached to a shank (68), the connector main body comprising a recess configured to engage part of a spherical end portion (72) of the shank, part of the spherical end portion extending outside of the recess in a direction towards the shank; as best seen in FIG.5 a rod supporting portion, as best seen in FIG.5, provided in the connector main body and configured for supporting a rod (12); as best seen in the FIGURES; and a pressure fixing device (34) for pressure fixing the rod to the rod supporting portion of the connector main body; as best seen in the FIGS.

It is noted that Burgess did not teach of a Flange portion arranged coaxially with the shank; as claimed by applicant. However, in a similar art, Altarac et al evidence the use of a flange portion to limit the distance a member can travel into a bore and prevent the removal of the second member.

Therefore, give the teaching of Altarac et al., it would have been obvious to one having ordinary skill in the art, at the time the invention was made to modify the flange of Burgess, as taught by Altarac et al, to limit the distance of travel and to prevent the removal of the second member

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess et al. (20030114853) in view of Rokegem et al. (5,630,817).

With respect to claim 4, it is noted that Burgess et al teach all the limitations, except for the rod supporting portion comprising a rough surface, as claimed by applicant. However, in a similar art, Rokegem et al., column 4, lines 45-51, evidences the use of a rod-supporting portion having rough surface to increase the adherence through friction between the rod and the body.

Therefore, given the teaching of Rokegem et al, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to modify the rod securing portion of Burgess et al; as taught by Rokegem et al to increase the adherence through friction between the rod and the body. As to the method used to roughen the surface, the result is the same; for example providing frictional resistance between the rod and the rod supporting portion.

#### ***Response to Amendment***

Applicant's arguments, see Remarks, filed 12/13/06, with respect to the rejection(s) of claim(s) 4,6, under 102/103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Rokegem/Altarac et al.

#### ***Allowable Subject Matter***

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Claim 3 is allowed.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,938,663

8-1999

Petreto

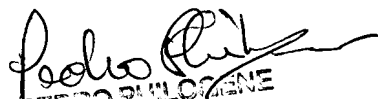
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
April 18, 2007



PEDRO PHILOGENE  
PATENT EXAMINER